

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MIGUEL A. IGLESIAS and U.S. POSTAL SERVICE,
FDR STATION, New York, N.Y.

*Docket No. 97-195; Submitted on the Record;
Issued March 15, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective December 10, 1995; (2) whether appellant met his burden of proof to establish that he sustained a recurrence of disability on November 29, 1995 or January 19, 1996.

On December 17, 1975 appellant, then a 32-year-old city carrier, sustained an employment-related low back sprain. He stopped work on December 29, 1975, returned on June 24, 1976 and sustained recurrences of disability on June 25, 1976, May 9, 1981, February 28, 1982, November 16, 1983, December 3, 1991 and November 9, 1993. Finding that a conflict in the medical evidence existed, the Office referred appellant to a referee examiner.

Based on Dr. Silver's reports, by letter dated October 27, 1995, the Office proposed to terminate appellant's compensation benefits. Appellant submitted additional reports from Dr. Kulak. He returned to full duty on November 29, 1995, but stopped work after a few hours and filed a recurrence claim, stating that he could not work due to pain. By decision dated November 28, 1995, the Office terminated appellant's benefits, effective December 10, 1995. On December 20, 1995 appellant requested reconsideration and submitted additional medical evidence. He returned to limited duty on December 22, 1995. By decision dated January 16, 1996, the Office denied appellant's claim that he sustained a recurrence of disability on November 29, 1995. Appellant stopped work on January 19, 1996 and again filed a recurrence claim, stating he could not work due to pain. He returned to work on February 1, 1996. By decision dated March 21, 1996, the Office denied modification of the November 28, 1995 decision, terminating appellant's benefits and in an April 8, 1996 decision, the Office denied appellant's claim that he sustained a recurrence of disability on January 19, 1996. On May 21, 1996 appellant requested reconsideration of the April 8, 1996 decision and submitted additional

evidence. By decision dated June 24, 1996, the Office denied modification, finding the evidence submitted insufficient to warrant modification. The instant appeal follows.¹

The Board finds that the Office met its burden to terminate appellant's compensation benefits.

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.²

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.³ Here the Office determined that a conflict of medical opinion existed between on the reports of appellant's treating physician, Dr. William J. Kulak and Dr. Milton M. Smith who provided a second opinion for the Office⁴ regarding appellant's continued disability. By letter dated September 6, 1995, the Office referred appellant, along with the medical record, a set of questions and a statement of accepted facts, to Dr. Joseph Silver, a Board-certified orthopedic surgeon, for an impartial medical evaluation.

In a report dated October 6, 1995, Dr. Silver noted appellant's history of injury and subjective complaints and, after examination and review of the medical record, advised that there were no clinical objective findings to indicate any underlying pathology that required further orthopedic treatment. He noted that appellant's pattern of pain distribution and radiation was "rather bizarre," and found no injury-related disability "at all," opining that appellant should be able to return to his regular duties. In an attached work capacity evaluation, Dr. Silver advised that appellant could work eight hours per day without restriction.

In response to the proposed termination, appellant submitted notes dated July 26, September 9 and October 18, 1995, in which Dr. Kulak again concluded appellant was totally disabled but provided no rationale for his stated conclusion. As Dr. Silver's reports are well rationalized and are, therefore, deserving of special weight,⁵ the Board finds that appellant had no employment-related disability on or after December 10, 1995, and the Office met its burden of proof to terminate appellant's compensation benefits on that date.

¹ Oral argument in this appeal, scheduled to be held on January 5, 1999, was canceled at appellant's request on December 29, 1998.

² See *Patricia A. Keller*, 45 ECAB 278 (1993).

³ See *Kathryn Haggerty*, 45 ECAB 383 (1994); *Edward E. Wright*, 43 ECAB 702 (1992).

⁴ Both physicians practice orthopedic surgery. Dr. Smith is Board-certified in pediatrics.

⁵ *Id.*

The Board further finds that appellant failed to establish that he sustained a recurrence of disability on November 29, 1995 or January 16, 1996.

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to him to establish that he had disability causally related to his accepted injuries.⁶ An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the recurrence of the disabling condition, for which compensation is sought is causally related to the accepted employment injury.⁷ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁸ Moreover, when an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.⁹

Causal relationship is a medical issue,¹⁰ and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹

The medical evidence in this case does not support that appellant sustained a recurrence of disability causally related to the accepted injury. While the record contains medical reports from Dr. Kulak, who advised that appellant had exacerbations of disability that were employment related, he did not identify any employment factors that caused appellant's disability.

⁶ See *George Servetas*, 43 ECAB 424 (1992).

⁷ *Kevin J. McGrath*, 42 ECAB 109 (1990); *John E. Blount*, 30 ECAB 1374 (1974).

⁸ *Frances B. Evans*, 32 ECAB 60 (1980).

⁹ *Mary A. Howard*, 45 ECAB 646 (1994); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

¹⁰ *Mary J. Briggs*, 37 ECAB 578 (1986).

¹¹ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

Regarding the November 29, 1995 recurrence claim, in an attending physician's report dated that day, Dr. Kulak diagnosed lumbosacral spasm and sacroiliac inflammation and checked the "yes" box indicating that appellant's condition was employment related. He advised that appellant was totally disabled. In a December 20, 1995 report, Dr. Kulak advised that appellant could return to limited duty, four hours per day. In a January 4, 1996 report, he noted findings on examination and advised that he "felt" that appellant had an exacerbation of lumbosacral spine and sacroiliac joint symptoms on November 29, 1995. In none of these reports, however, did Dr. Kulak discuss how appellant's condition was related to the December 17, 1975 low back sprain, and the Board has held that a physician's form report which merely checks the box marked "yes" to the inquiry as to whether the condition for which treatment is rendered is causally related to the history of injury as given, is of diminished probative value as it constitutes a conclusion without the benefit of any medical rationale.¹² Appellant, therefore, failed to establish that he sustained a recurrence of disability on November 19, 1995.

Similarly, appellant failed to establish that he sustained a recurrence of disability on January 19, 1996. In a January 22, 1996 treatment note, Dr. Kulak noted findings on examination and advised that appellant could only work four hours per day and in a March 13, 1996 report, diagnosed bilateral paralumbar muscle spasm and chronic sacroiliac joint inflammation, left greater than right. While he advised that appellant had reinjured his back at work in January 1996, other than stating that appellant could not work for more than four hours per day, he did not provide an explanation regarding why appellant could not perform the light-duty assignment. Dr. Kulak continued to furnish reports, and on May 20, 1996 advised that appellant could return to limited duty for eight hours per day with restrictions.¹³

As appellant failed to submit rationalized medical evidence that identified specific employment factors that caused him to stop work on November 29, 1995 and January 19, 1996, he failed to discharge his burden of proof, and the Board finds that he failed to establish a recurrence of disability.¹⁴

¹² See *Barbara J. Williams*, 40 ECAB 649 (1989).

¹³ Appellant also submitted reports of magnetic resonance imaging of the lumbar spine dated January 4 and May 7, 1996, that revealed disc bulges at L4-5 and L5-S1.

¹⁴ The Board notes that on August 30, 1996 appellant submitted a Form CA-2a claim, alleging that he sustained a recurrence of disability on August 9, 1996. By letter dated September 11, 1996, the Office informed appellant that he should submit a Form CA-1, claim for traumatic injury for this incident. This claim is not before the Board as the Office has not rendered a decision on the merits; see 20 C.F.R. § 501.2(c).

The decisions of the Office of Workers' Compensation Programs dated June 24, April 8, March 21 and January 26, 1996 and November 28, 1995 are hereby affirmed.

Dated, Washington, D.C.
March 15, 1999

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member